

ESTTA Tracking number: **ESTTA653441**

Filing date: **02/02/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057387
Party	Defendant Nikia S White
Correspondence Address	JOHN L WELCH LANDO & ANASTASI LLP 1 MAIN ST FL 11 CAMBRIDGE, MA 02142 UNITED STATES jlwtrademarks@lalaw.com
Submission	Other Motions/Papers
Filer's Name	John L. Welch
Filer's e-mail	jlwtrademarks@lalaw.com, drwtrademarks@wolfgreenfield.com
Signature	/JohnLWelch/
Date	02/02/2015
Attachments	93057387 Motion to Dismiss.pdf(82640 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

_____)	
YOGA SMOGA, INC.,)	
)	
Petitioner,)	
)	
v.)	Cancellation No.
)	92057387
NIKIA S. WHITE,)	
)	
Respondent.)	
_____)	

MOTION FOR JUDGMENT UNDER RULE 2.132(a)

Pursuant to Rule 2.132(a) of the Trademark Rules of Practice, 37 C.F.R.

§2.132(a), Respondent Nikia S. White, by his counsel, moves for judgment in his favor on the ground that Petitioner Yoga Smoga, Inc. has neither taken testimony nor introduced any evidence in support of the petition for cancellation herein.

On June 13, 2013, Petitioner filed a Petition for Cancellation of Respondent's U.S. Registration No. 4,163,190, alleging that the mark of said registration had been abandoned. [Paper No. 1, paragraph 5].

On June 28, 2013, Respondent filed and served his Answer to the Petition for Cancellation, denying that his mark has been abandoned [Paper No. 2, paragraph 5].

Petitioner's Pre-Trial Disclosures were due on December 9, 2014. [Paper No. 16].
Petitioner did not serve any Pre-Trial Disclosures.

Petitioner's Testimony Period opened on December 24, 2014 and closed on January 23, 2014. [Paper No. 16]. Petitioner took no testimony and submitted no evidence.

Rule 2.132(a) states that a defendant may move for involuntary dismissal if the time for taking testimony by plaintiff has expired and plaintiff has not taken testimony or offered any other evidence. That is the precise situation at hand in this cancellation proceeding.

This motion is timely under Rule 2.132 (c) because it is filed prior to the opening of Respondent's testimony period, which is scheduled for February 22, 2015. [See Paper No. 16].

Therefore, Respondent requests that the Board enter judgment in his favor and against Petitioner, dismissing the Petition for Cancellation filed herein.

NIKIA WHITE



Dated: February 2, 2015

John L. Welch
Lando & Anastasi, LLP
One Main Street
Cambridge, MA 02142
617/395-7070

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon Petitioner this 2nd day of February, 2015, by mailing a copy thereof via first-class mail, postage pre-paid, to its counsel, Douglas R. Wolf, Wolf Greenfield & Sacks, PC, 600 Atlantic Avenue, Boston, MA 02210.

A handwritten signature in black ink that reads "John L. Welch". The signature is written in a cursive, flowing style.

John L. Welch
Lando & Anastasi, LLP
One Main Street, 11th Floor
Cambridge, MA 02142
(617) 395-7000